IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

TRUST PETITION NO.3 OF 2007

Nomanbhoy T.Bandukwala & Ors. ...Petitioners

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Mr.P.K.Dhakephalkar, Sr.Counsel with Mr.A.S.Khandeparkar i/b Gaonkar & Co. for Petitioners.

Ms.Geeta Shastri, A.G.P. for State of Maharashtra.

Mr.R.M.Momin for Maharashtra State Wakf Board.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 26, 2007.

P.C.

1. Heard Counsel for the Petitioners.

2. As the property is governed by Wakf Board, provisions of Wakf Act, 1995 will apply to the fact situation of the present case. In terms of Section 51 of the Act, the Petitioners will have to seek permission of the Wakf Board. The apprehension of the Petitioners is that the Wakf Deed provides that for sale of immovable property of the Trust, the Trustees will have to apply to the High Court for

permission in that behalf. Indeed, the fact that such provision is made in the Wakf Deed, is not in dispute. However, in view of the expansive language of Section 51 of the Wakf Act, which opens with non-obstente clause, such stipulation in the Wakf Deed cannot extricate the authority of the Wakf Board available under Section 51 of the Act.

3. Thus understood, the Petitioners will have to pursue their remedy before the concerned Wakf Board in terms of Section 51 of the Wakf Act, 1995. All questions in that behalf will be decided on its own merits.

4. The present Petition is therefore disposed of with liberty to the Petitioners as aforesaid.

5. Needless to observe that the concerned Wakf Board will decide the Application preferred by the Petitioners under Section 51 as expeditiously as possible, preferably by end of April 2008.

A.M.KHANWILKAR, J.